

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
April 22, 2013 at 6:00 P.M.

PLEDGE OF ALLEGIANCE – A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Jeff Valiant, Chairman, Tina Baxter, Don Mottley and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Terry Dayvolt, Judy Writsel and Mike Winge.

Roll call was taken and a quorum declared present. The Executive Director stated that any motion will need all four Board members to vote in order for a motion to carry.

MINUTES: Upon a motion made by Tina Baxter and seconded by Don Mottley, the Minutes of the last regular meetings held February 25, 2013 and March 25, 2013, were approved as circulated.

SPECIAL USE:

BZA-SU-13-08

APPLICANT: Morgan Arms by Mr. Joseph Morgan, President

OWNER: Rhonda Morgan

PREMISES: Property located on the E side of Baker Road approximately 590 ft N of the intersection formed by Baker Road (W400) and Trails End (S75). Boon Twp. 600 S. Baker Road. *(Complete legal on file.)*

NATURE OF CASE: Applicant requests a Special Use from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a Home Work Shop with no more than one employee and no commercial vehicles. Business is to warehouse firearms in an unattached accessory building and sell firearms via internet and gun shows. Also the manufacture and sale of rifle and pistol ammunition; load and package ammo and sell via internet and gun shows in a "CON" Recreation and Conservancy zoning district. *(Advertised in the Boonville Standard April 4, 2013)*

Joe Morgan and Rhonda Morgan approached the podium.

The Chairman called for a staff report.

Mrs. Rector said they have submitted all of the green cards from certified mail of notice of this meeting to the adjacent property owners. She said the Chairman stated they are asking for a Special Use to allow home workshop with no more than one employee and no commercial vehicles. She said the business is to warehouse firearms in an unattached accessory building and sell firearms via internet and gun shows; also the manufacture and sale of rifle and pistol ammunition; load and

package ammo and sell via internet and gun shows. She added the property and surrounding property is zoned "CON" Recreation and Conservancy with some single family dwellings. She said there is no flood plain on the property and there is an existing entrance off Baker Road. She said the applicant emailed the Area Planning Office with his proposal that stated *"I plan on ordering in firearms from distributors such as Zanders and Accusport and warehousing them in my detached garage. I will have a website made in which to sell them. I will also be selling firearms on the other websites such as Gunbroker and Guns America. The links from these outside sites should draw customers to my website. After being sold, the firearms will then be shipped to other dealers for the final transfer to the customer. No person to person transfers will take place at my home location and there will be no signage here. I also plan to sell these similarly acquired firearms at gun shows within the state of Indiana, with the transfers to be done at the gun show only. The 3rd part of my plan involves the manufacture and sale of rifle and pistol ammunition. I plan to load and package ammo in the same detached garage and sell it on my website and other websites such as Gunbroker and Guns America. Ammunition will be shipped directly to the customer. I plan on selling this same ammo at gun show within the state of Indiana as well."*

Mrs. Rector said she also had discussions with Stan Baker, ATF Industry Operations Investigator, who said *"the plan Mr. Morgan proposes would fall within the transfer to another Federal Firearm Licensee. In that process the transfer is between two ATF Federal Firearm Licensees and does not require the transferee to appear at the licensed location or complete an ATF Form 4473. The applicant from January 2012 wanted to transfer to a non-licensee away from the licensed location which would not be allowed. The business plan submitted by Mr. Morgan would comply with ATF Regulations. In addition, ATF Regulations require the FFL comply with all state and local laws to include zoning."* She said he further added *"two exceptions to the transfer on business premises:*

- 1. The transfer is conducted as a broker or internet sales. The purchaser does not live in the local area and the firearm is transferred to another licensee for transfer to the non-licensee.*
- 2. The transfer is for a gunsmith (repair) action. The firearm is mailed to or dropped off at the licensed premises for repair or modification, the owner of the firearm would not complete the ATF form 4473 for purchase and would not be required to pick up the firearm in person.*

In both situations the transfer would not be required to take place at the licensed premises."

Mrs. Rector said she asked Mr. Baker if the ATF regulates the manufacturing of ammunition. His response was *"ATF requires an FFL for manufacture of ammunition but it is mainly for tax purposes. There is no requirement for onsite sales etc."* She said she presented this to the Plan Commission who determined that it qualified as a home workshop and would not require rezoning of the property and Mr. Morgan came in and filed this application. She added they have the proposed use statement in their packets as well as a plot plan that shows the location of the existing residence and buildings. She said the application is in order.

Mr. Morgan had nothing to add.

The Chairman called for questions from the Board. Being none he called for remonstrators.

Mrs. Rector said she would like to further add the proposed workshop is in a 1920 square foot building and at this time the ordinance only allows one employee for each 1000 square feet of building. She said they own over four acres and so it meets the acreage requirements for a home workshop.

The Chairman said it appears there are no remonstrators and again called for questions from the Board.

Tina Baxter asked the firearms and the ammunition will be locked up in steel cabinets.

Mr. Morgan said they are locked up and he also has a video surveillance system installed on his property.

Tina Baxter asked if it goes to the police.

Mr. Morgan said no, it is just recording all the time, inside and out, and it sounds an alarm.

The Chairman clarified there will be no transfer of weapons or ammo at the property.

Mr. Morgan said that is correct.

Tina Baxter said she doesn't quite understand how the internet works; if you go out of state with this; can he explain how you ship things through the internet.

Mr. Morgan said he boxes up the purchase and sends it to another gun dealer; it has to be shipped to a dealer and the customer will go in and do the transfer there.

Don Mottley asked much ammunition he will have on site.

Mr. Morgan said no more than 100 boxes at a time.

Don Mottley asked if it would be different calibers.

Mr. Morgan said it will mostly be pistol and rifle; there may be a little shot gun but mostly pistol and rifle.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Tina Baxter made a motion the findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.

6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to no more than one employee in addition to the owner, based on the 1920 square foot building.
4. Subject to the owner remaining a resident of the residence.
5. Subject to the home workshop remaining in the existing 1920 square foot building as shown on the plot plan.
6. Any outside storage shall be completely enclosed within a solid fence and shall not exceed 1920 square feet.
7. A sign not exceeding 25 square feet may be erected to identify the home workshop. The sign requires an ILP.
8. Subject to Health Department regulations regarding the septic system.
9. Subject to the rules and regulations of the ATF.

The motion was seconded by Jeff Willis and unanimously carried.

The Morgan's were told they can pick up their approval on Wednesday.

VARIANCE:

BZA-V-13-09

APPLICANT/OWNER: Maken Corp. & Ubelhor Homes INC. by Danny Ubelhor, Pres.

PREMISES: Property located on the N side of Park Place Drive approximately 400 ft NE of the intersection formed by Park Place Drive and High Pointe Drive. Ohio Twp. Lot No. 6, 7, & 8 in High Pointe Centre North 1D.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an Improvement Location Permit to be issued for Park Place V Apartments, located on Lots 6, 7, and 8 in High Pointe Centre North 1D not meeting the minimum required parking spaces. There will be 1 building on each lot consisting of 15 units which requires 30 parking spaces (90 spaces total). They are requesting a relaxation of seven spaces per lot to total a relaxation of 21 spaces in a "C-4" General Commercial zoning district. (*Advertised in the Boonville Standard April 4, 2013.*)

Danny Ubelhor and Jim Morley, Jr., Morley and Associates were present.

The Chairman called for a staff report.

Mrs. Rector stated they have all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said she isn't going to reiterate the nature of case; it was all spelled out by the Chairman. She said this property is zoned "C-4" General Commercial Zoning with vacant lots and the surrounding properties are zoned "C-4" General Commercial with other sections of Park Place PUD to the North and West, and vacant lots to the south and east. She said there is a vacant lot to the southeast zoned "C-3" Highway Commercial. Mrs. Rector said there is no flood plain on the property and there are 2 approved commercial entrances off of Park Place Drive. She said the applicant states in their application *"The Variance is requested based on the following information regarding senior living single bedroom units:*

- Single bedroom units are often rented by an individual with a single mode of transportation, if any.
- Even if more than one person occupies a unit, it is not likely that multiple vehicles will be present.
- Also attached as a separate sheet is a breakdown of parking statistics for the existing Park Place apartments which shows that the existing ratio for single bedroom units is only 0.95 vehicles per unit." Mrs. Rector said the breakdown sheet is in their packets. She said they also have a copy of the plot plan in their packets and added a Variance similar to this was granted on other sections within the same complex and this is just continuing the project. She said this is a 55 and older complex.

Jim Morley, Jr. said as the Executive Director stated, this is a pretty common theme. He said the parking analysis was based off eighteen buildings and since that analysis was done two more buildings have been built last year as part of the PUD process. He said a parking variance was granted through the PUD process; it didn't come through this Board. He said they are providing 1.3 parking spaces per unit which exceeds the .95 that is needed. He said there is no need to have two spaces per unit and by going with this Variance it allows the County to collect a higher tax yield off the property because they are not paving ground that doesn't need to be paved and therefore can increase the amount of green space on the property. He said so far to date, even at 1.3 spaces it is excessive parking for what is needed. He said they feel this Variance is appropriate and it is for a good project. He said it is nice to know that there will be some construction out there and people will be put to work and then the County can receive taxes off the buildings.

Ascertaining there were no questions from the Board and being no remonstrators present, the Chairman called for a motion.

Jeff Willis made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a

marked exception to the property in the neighborhood. Such condition is that the residents tend to have less than one car per unit.

4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.

The motion was seconded by Don Mottley and unanimously carried.

The applicants were informed they could pick up their approvals on Wednesday.

OTHER BUSINESS:

BZA-SU-12-04

APPLICANT AND OWNERS: American Legion Tennyson Post 463 – Discussion regarding condition placed on approval and requesting additional time.

The Chairman called for a staff report.

Mrs. Rector said in February of 2012 the BZA Board members approved a Special Use (SU 6) to allow a (social club) gun club with spot, board, and beef shoots. She said the approval was based on the following conditions.

1. Subject to the rezoning being approved by the Town of Tennyson.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to the construction of a berm 20' long on the left and right sides of the shooting area both ten foot before and ten foot past shooters 6' high; and behind the spot boards a berm 20' past on both ends to catch any stray from the final targets to be 10' high.
8. Subject to the area being heavily posted with signage detailing the no shooting requirements.
9. Subject to the conditions being satisfied by February 27, 2013 or come back before the Board of Zoning Appeals for their March meeting to request an extension or be issued a cease and desist order.

Mrs. Rector said they didn't have a March meeting and they were asked to come to the meeting tonight and so no cease and desist order was sent. She said the Town Of Tennyson approved to change the zoning classification of the property from a "R-1A" Residential zoning, to an "A" Agricultural Zoning District. She said on December 17th we sent them a letter reminding them of the conditions and telling them they would be on the March agenda but due to no business being filed for the March meeting they are here this evening.

Mrs. Rector said on January 28th Michael Brady, Judge Advocate, sent a letter stating "*As far as we know, we have or are complying with the provisions set forth in your letter. With regard to item #7, we have constructed a thirteen feet high, one hundred ten foot wide barrier berm constructed from telephone poles and rubber conveyor belting (from the coal industry). It is located 43 yards from the firing positions. We are presently waiting on the weather to break to complete the project. We*

therefore request an extension until the end of May to complete the project....Additionally, we would like it noted that other Shooting Range activities which occur within Warrick County do not have such stringent requirements. We would be happy to provide examples of these at your request."

Mrs. Rector said on April 1, 2013 the Building Inspector visited the site and took photographs showing the shooting range and barrier. She said on April 19th the inspector took new pictures which show the same barrier but appears it has been changed to angle more towards the shooting area instead of straight up. She said the barrier, according to their letter is 37 feet short of the condition of the approval and there are no berms up along the sides of the shooting area.

She said they are here this evening requesting an extension of time until the end of May, from what she gathers from their letter, and she assumes from the condition #7.

Michael Brady and Rocky Baize approached the podium.

Michael Brady said they have been dealing with this for quite a long time and they are doing their absolute best. He said they are a small post but they contributed over \$20,000 in denotations and charitable efforts as a result of the shooting matches they hold at this facility. He said this facility has been in existence, on this same property, for greater than fifty years. He said there has been a shooting match there going on, constantly, never ending. Mr. Brady said but for an administrative snafu this property would be grandfathered from any such rules. He said the Town of Tennyson and he understands it, Mr. Phillips, are the whole reason this is going on in the first place.

The Chairman called for questions from the Board.

Rocky Baize asked if he could add something. He said regarding the side berms; the shooters...one of the reasons they are not up...they have the material there but the concern is the shooters. He said the shooters are concerned it will cause ricochet directly back at them; no matter what they put there; whether it is an earthen berm or the belting – it is too close and they don't want something that close. He said they have been shooting there since 1951 and there was a lull in the 1980's for a little bit but in all of those years there has never been an accident or injury on that gun range. He said they have it heavily posted in signs; all their shot is contained to the range now and none of it is getting off the property. Mr. Baize said they have complied the best they can and they are just asking...they have done more than a lot of other gun ranges in this county. He said there is one range that shoots in an open field in Lynnville-they have nothing there. He said they are asking to let them be done and let them have the use of their post back when they say it – not somebody else regulating when they can do what they want on their post. He said they have contained (the shot) and reduced the hazard.

Mrs. Rector said she doesn't know who staff spoke with but someone said something about putting "wings" on something.

Mike Brady said that was in the original proposal when he submitted the letter back in January because they were still kind of experimenting with this telephone pole and conveyor belt system. He said she rightfully noted that it has now been angled so that when the shot hits it goes down instead of coming back at you; it is all about safety. He said everything they have done in containing – it is all about safety and they are, again, they are experimenting with...but as Rocky notes, the participants don't want the wings because of ricochet.

Mrs. Rector asked if they are asking the Board to allow them or to amend their approval to not have the thirty some feet more they are supposed to have and then nothing down the side; is that what they are asking.

Attorney Doll said also to change it from an earthen berm to ...

Rocky Baize said there was no wording of "earthen".

Mrs. Rector agreed there wasn't. Said she read the Minutes and that is what was always spoken about and they even talked about trying to get some dirt from the County and digging a lake from Mr. Stahl and so she thinks they were assuming...

Rocky Baize said an earthen berm was about \$100,000.

Mike Brady said that was completely cost prohibitive. He said \$100,000 for transportation and bulldozer work. He said they are a not for profit organization and to be honest with them, the shooting range is their primary source of income.

Rocky Baize said they have helped the community out a lot.

Mike Brady said they have donated over \$20,000 in the last twelve calendar months to individuals or charities within Warrick County.

Don Mottley asked who made the motion at their approval.

Mrs. Rector said it isn't in her papers and the Minutes are on her desk. Staff left to get the Minutes.

Mrs. Rector said she thinks Mike Winge made the motion but she isn't sure.

The Chairman asked if there are any other questions while they wait for the Minutes to get here.

Tina Baxter asked if they are still under the subject of the rezoning being approved by the Tennyson.

Mrs. Rector said no that has been done.

Mrs. Rector said this all started when they came in to check about putting bathrooms in the building and then they found out the Town of Tennyson had annexed them in and didn't specify a zoning and so the zoning went to residential per the ordinance. She said that is why they had to file a rezoning back to the Agriculture and then do a Special Use because that knocked everything out of it being grandfathered.

Tina Baxter said with new laws and everything too.

Mike Brady asked what new laws she is talking about.

Tina Baxter said safety laws for places; she said there are new laws compared to the older shooting ranges that are probably grandfathered in on some things but when you hit this where it had to be rezoned, etc. then it got under more safety.

Mike Brady said they have checked those regulations with the ATF. He said in regards to pistol and rifles there are a lot of changed laws but with regards to shotgun ranges there have been no new laws in the last thirty years.

Mrs. Rector said the Minutes indicate that Mike Winge made the motion in 2012. She said the motion was seconded by Terry Dayvolt and...

Don Mottley said he thinks it was a unanimous vote.

Mrs. Rector said she thinks so to but the last page is missing.

Jeff Valiant said he thinks it was unanimous as well but with those conditions. He then called for remonstrators.

Eric and Deborah Stahl approached the podium.

Deborah Stahl submitted photos of crop damage to the Board. (Copies on file.) She said they weren't able to provide that the last time.

Eric Stahl said basically what they are saying is this wasn't put up until January or February and so last summer - they shot all last summer. He said it was stated in here the last time that the shot does go on their property and they had issues with the lead contaminating the ground. He said if they have been up there and seen it – behind where they put this, it won't grow anything because it is all lead. He said all that water goes on his property and in times when the water backs up it also takes it into town.

Deborah Stahl said she is surprised this got passed without them coming into compliance first. She said she wished someone would explain to her why.

Jeff Valiant said he believes it was based/approved...

Mrs. Rector asked him to repeat the question.

Jeff Valiant said she was curious how this passed without them being in compliance and he thinks it was passed based on them meeting the conditions and they gave them a time frame to do that.

Mrs. Stahl said so they were okay to go ahead and have the spot shoots.

Mrs. Rector said yes they were because they were given until March of this year to get it completed. She then informed the Stahl's that the submitted pictures stay with the Board.

Mrs. Stahl said in the last meeting in February 2012 it was talked about that they would clean up all of the lead; it was one of the things they said they would do. She said to her knowledge that hasn't been done there. She then asked who is going to clean up the lead on her property; who is responsible.

Jeff Valiant said he doesn't remember that part of the meeting and he is going over the Minutes right now to make sure.

Mrs. Rector said it may take a while because it is over twenty pages.

Mrs. Stahl said she didn't know if they have to clean the lead off her property as well – who is going to be responsible. She said it was established at the last meeting it was a contaminant; it is in the Minutes.

Mrs. Rector said she believes it was a Board member's opinion; they are not specialists in contamination.

Mrs. Stahl said so they need to contact IDEM and the EPA.

Mrs. Rector said yes.

Mrs. Stahl asked if they should send a soil sample to which Mrs. Rector said she doesn't know what they do but this Board doesn't do that.

Eric Stahl said they said this has been going on since ...for fifty years but when they bought this property in 1992 it was a ball field; it wasn't a shooting range. He said there was also a volleyball...

An unidentified person said that was all to the left side of the property; not in the gun range.

Attorney Doll said they can't just record general comments and they have to make a record by law so if they have a response to what is said they should note it and then at the end they can address their positions.

Eric Stahl said they also have concerns about people being on their property. He said since the first of the year, Vectren has been back there three or four times. He said they ...

Mrs. Stahl said they leave things on the door and get hold of them letting them know the approximate time and when they will be coming. She said it was noted last time there are Vectren workers, farmers, Steve Warner with Classified Forestry – there are different people who come on their property and that is why it was a big concern that the stray shot stay off their property so they can go on about their business. She said they keep getting this feeling like they aren't supposed to be going up and down their barn drive. She said it runs along the side of the American Legion. She said they have had friction about that at times. She said they need to be able to go about their business. Mrs. Stahl said it is their private property and they didn't give them permission to have these spot shoots where they invite the public to come shoot across her private property. She said there have been time where they have parked in their barn driveway/farm driveway and they also put a horse shoe pit on there and she had to call the Sheriff's Department because they couldn't get it worked out. She submitted pictures of the horse shoe pits that as well. (Copies on file.) She said they need to see...if they don't have adequate parking then they should consider having it at some other location.

Jeff Valiant asked what the notifications on the door were for.

Mrs. Stahl said Vectren.

Mr. Stahl said Vectren has an easement on his property.

Mrs. Stahl said she is also going to pass around a picture that shows how dead the grass is behind the shooting range and that is why they are concerned about the lead being on their property.

Tina Baxter asked if the picture of the horse shoe pit is on her property.

Mrs. Stahl said that is correct. She then said she thinks they get irritated when she has to drive back there to load up the rabbits for 4-H. She said her children were the in 4-H rabbit club; one has graduated and one still is but they have to go back and load up the rabbits and they have to use the barn/farm lane – that is their only access to the barn. She said she thinks it irritates them because that is when they started parking in the farm lane. Mrs. Stahl said this is her private property and she has to be able to go about her business and she doesn't want to cause them problems; she has tried to stay back as much as possible and there has only been about two times she had to drive back there to do things. She said after the second time the horse shoe pit showed up.

Jeff Valiant asked about a picture and the driveway.

Mrs. Stahl said it is unprofessional and if they need more parking they should find someplace else to hold it.

Mr. Stahl said they said in the past they had trouble with people shooting hand guns, shot guns and muzzle loaders; it hasn't been a problem since they were here the last time. He said they said the last time they were here that their son was deer hunting in a tree and someone started shooting and the bullets whizzed past. He said that is why they wanted the berm because it would stop it. He said they did put the signage up but that doesn't always stop people.

Mrs. Stahl said another reason they wanted a dirt berm ...

Attorney Doll said they only question he has is the American Legion is here seeking a variance or relaxation of requirement seven. He asked if that is the only issue they (Legion) has.

Mr. Baize said yes.

Attorney Doll said they are not going to re-hear the approval of the Special Use or any of those things, that is history – it is done and the appeal period on that has passed. He said they can't reconsider that and they don't have any application from the American Legion seeking a different Special Use. He said their sole question deals with this issue, paragraph number seven of the conditions was that it was approved subject to the construction of a berm 20 feet long on the left and right sides of the shooting area both ten feet before and ten feet past shooters. He said that was to be six feet high and behind the spot boards was to be a berm 20 feet past on both ends to catch any stay from the final targets and it was to be ten feet high. He said his question to them is what is their position concerning their proposed variance. He said as he understands their proposed variance is what is there tonight; that is what they are asking to be approved. He asked the American Legion if that is correct.

Mr. Baize answered yes.

Attorney Doll said nothing in addition to it and that is based on the letter sent to staff. He said since the January 28th letter and they are not talking about wings or anything else; they are talking about what you see is what you get; so the question he has for them is what their position is to that request.

He said not the lead on the land; they may have a private right of action or private cause of action, obviously he doesn't represent them and couldn't or wouldn't because it is a conflict, but they may have their own recovery rights and that is between them and the post. He said the question they can deal with tonight is whether or not they should relax paragraph seven and accept the barrier that is presently built there. He asked what they say to that request.

Mrs. Stahl said she isn't willing to accept it as is because it isn't done.

Attorney Doll said not just they are opposed to it but why.

Mr. Stahl said if you look at the statistic of gun accidents and the direction of fire; most all of the accidents on a firing range happen to the left or right, not down range.

Mrs. Stahl said that was discussed at the last meeting as well.

Mr. Stahl said it is a fact and if there is going to be an accident it is usually to the left or right, not down range.

Attorney Doll said so their objection is that they haven't built the "wings" for lack of a better definition. He asked if that is the only thing they are objecting to. He asked if they want them to build the 20 foot long berm, wing, barrier ten feet in front and ten feet past the shooters and it be six feet high; is that what they are asking for.

Mr. Stahl said that is what was originally stated.

Attorney Doll said and they are asking for it to be built on their property line side of the range.

Mr. Stahl said that will be on the left and right.

Attorney Doll clarified the Stahl's surround the post. He asked if there is anything else about the request for what he will call a relaxation or modification of paragraph seven.

Mr. Stahl said by it not being an earthen berm it isn't going to stop...it won't stop rifles and handguns and stuff like that. He said they have put signs up but if it becomes an issue...

Attorney Doll said they can't deal with a hypothetical; it could be anything but it is supposed to be shotguns as he understands it and that is generally what a shoot is.

Mr. Stahl said that is what their signage says.

Attorney Doll said they have to deal with the realities of what the proposed use really is and the hypothetical uses ...unless they can tell the Board that on occasions there have been shoots there involving rifles or pistols that he can testify to...

Mr. Stahl said he had to call the cops to get it to stop.

Attorney Doll said so he is saying there have been organized shoots there involving rifles or pistols.

Mr. Stahl said no.

Attorney Doll said unless he can do that then they are going to deal with the shotguns which is the issue. He said they can be here all night rehashing the same thing and they have been asked to consider whether or not a variance to subsection seven of the requirements of the Special Use would be approved or not and their objection is they want the wings built as they were previously talked about and they also want it to be an earthen berm.

Mr. Stahl said it wouldn't ricochet if it was.

Mrs. Stahl said she thinks it was unprofessional when their S.A.L. Commander posted on the internet that the Stahl family is against Veterans and Legions.

Attorney Doll said the great thing about having freedom of press; people can say lots of stuff in the United States ...and it is up to her if she wants to do something about that. He said that is not jurisdictionally within their area of expertise; he is just asking what it is they object to about which they are before them tonight.

Mr. Stahl said he wished he had information about that prior to this.

Attorney Doll said information on what.

Mr. Stahl said information they wanted to get this changed. He said they were under the impression they were here...

Mrs. Stahl said they didn't get no notice on them wanting to change this.

Attorney Doll asked how they found out about being here tonight.

Mr. Stahl said they were notified last month that they were going to go back and look at this again to see if it had been completed.

Attorney Doll thanked him and said he is just trying to keep it on point.

Jeff Valiant asked Mr. Brady if he had any rebuttal.

Mrs. Stahl said she wasn't done speaking. Her husband might be done but she isn't.

Attorney Doll said he asked if there was anything else about number seven that he had an objection to.

Mrs. Stahl said she wants them to see more pictures.

Attorney Doll asked if they have to do with the issue of paragraph seven.

Mrs. Stahl said it has to do with crop damage.

Attorney Doll said they don't have jurisdiction over crop damage. He said she has a private right of action just like any other property owner in the United States if she thinks there is crop damage being

caused to her by a neighbor. He said this Board does not have any jurisdiction over crop damage; they can't fix that problem for her. He said the General Assembly didn't give them that power.

Mrs. Stahl said then she will have to go another course of action, legal action; take it up with a lawyer – you all and them.

Attorney Doll stated that is up to her. He asked if there is anything else about number seven; he assumes she and her husband are in agreement about number seven.

Mrs. Stahl said she had nothing else.

Michael Brady said to a couple of points, the berm or barrier they have constructed was done-it actually has been changed three times all due to safety and all of that was to prevent shot from leaving the property in any way, shape or form. He said Mr. Stahl correctly said that accidents that occur at shotgun ranges are to left or right. He said they are always right at the firing position when someone drops their shotgun and it goes off at the firing position, not down range. Mr. Brady said they moved it three times as a matter of safety and they are experimenting with it to try to get it so everybody is protected and so that lead shot doesn't leave the property. He said without actual soil samples and testing he can't answer what has taken place over the last fifty to sixty years with that property but he knows there was an awful lot of lead shot that had left the property before Mr. Stahl bought the property. He said on another note, they have never had a sanctioned or approved rifle, pistol or muzzle loader shoot at their post; it didn't happen with their knowledge and it won't. Mr. Brady said the police have been called numerous times but have walked away because they were conducting a perfectly legal shoot and everything else but they have been called repeatedly to their shoots and have found absolutely nothing wrong with what they were doing and the Sheriff's Department can attest to it. Mr. Brady said no one has been hurt since the berm has been constructed and it has been going quite well and there is no evidence that shot is leaving the property at present.

Rocky Baize asked they please take into consideration the side berms would be more a safety hazard than something that would help. He said the property to the south of them is all woods so...the house through the woods is west of the gun range and it isn't in range. He said their place is several hundred yards to the northeast and so the side berms are more of a safety hazard to their shooters. He said if he needs to get a petition he will; they have people who show up every shooting match who say they will quit coming if they have to shoot like that.

Mr. Brady said it has been brought to his attention; he hasn't seen it personally, but it was brought to his attention that Mr. Stahl himself has participated in their spot shoots, voluntarily. He said as to the property line question, he doesn't know...he hasn't seen a survey and he doesn't know if their horse shoe pits were constructed on or off their property.

Attorney Doll said that isn't here tonight.

Mr. Brady said they aren't trying to be bad neighbors; they are trying to be good neighbors but the Stahl's have not presented themselves at any of their public meetings and brought their concerns to them. He said the American Legion is a good neighbor and always has been.

Jeff Valiant said he is going to ask this because he isn't a gun person; how is a side berm imposing a safety issue if it is made out of dirt.

Rocky Baize said number one would be the cost. He said they are a very poor post.

Mr. Valiant said he understands that but it doesn't impose on anybody's safety, it is just cost. He said they are talking about building something like they have now and he would understand the ricochet off that.

Mr. Baize said they have the materials for that. He said as far as getting the dirt from the County they never know when they will get it and then they have to pay for fuel and someone to move the dirt.

Mr. Valiant said he understands the cost of it but he made the comment it was a safety issue and he was trying to figure out how it was a safety issue.

Mr. Brady said there are a lot of shooters who go to all the other ranges and they don't have these restrictive barriers or berms of any kind and to be honest the folks in Warrick County who like to shoot at shooting matches they like things the way they always liked them; they don't like stuff to change. He said that is probably where some of that comes from and some think it isn't safe. He said it may be safe, he doesn't know. He said everything they have done up to this point has been an exercise in safety and that is reflected in the fact that no one has been hurt; there have been no incidents or ambulance runs of any kind. He said they had a very big shoot as recent as two weeks ago.

Tina Baxter said she thinks their main concern is just of the safety, period, of the people in the neighborhood that are complaining at this point.

Mr. Brady said there is no neighborhood, per se.

Tina Baxter said then the next owner's property, next to theirs is what she is saying; that is their neighbor. She said they are saying their son was up in a tree...

Rocky Baize said that was before they re-opened the post. He said there was no one at the post and it wasn't opened for operation.

Mr. Brady said it wasn't an American Legion function and it wasn't an American Legion shoot; it was an individual who was illegally on the Legion property and they can't control that.

Tina Baxter said they don't deal with that anyway but they want to make sure the property owner is protected also.

Mr. Brady said they have taken all the steps they know of how to do that and can afford to do. He said again, there is no evidence that any shot is leaving the property since this berm was constructed.

Mr. Baize said so all their concerns about crop damage and lead contamination is contained. He said they are working on having the lead cleaned up.

Mrs. Rector said in going by the certified plot plan done by Bill Bivins, P.E., it shows the covered shooting area is 108 feet long. She said based on the approval, the berm was to be 20 feet past on each end so it should have been 148 feet wide and according to their letter they have one that is 110 feet wide.

Rocky Baize said it is actually 120 wide because the coal company cut the belts at 120 feet and that is what they made it. He said that is what they could load on their truck.

Mr. Brady said the belting is quite heavy.

Mrs. Rector said so centered the berm is about ten feet past on each side. She said they have nothing down next to the shooters. She said the Stahl's house...if she were aiming at the boards she would have to make a hard left turn in order to hit their house. She said their house is not behind where they are shooting at it is over in another direction.

Mr. Brady said it is several hundred yards away.

Mrs. Rector said they do have crops behind the spot boards and woods but not their house; it is still their property though.

Mr. Baize said that is why they have contained the shot.

Tina Baxter asked about the road there.

Mrs. Rector said it is a road that Vectren uses.

Mr. Brady said it is an easement access road.

Don Mottley said he is like Mr. Valiant, he is not a shooter but years ago he would attend shoots and he knows the only range he is familiar with is Boonville Gun Club and they have an earthen berm. He said they have an earthen berm at Red Brush and they shoot everything there from pistols to automatic weapons. He said the facility down off 164 off Heckle Road has earthen berms; so...

Mr. Brady said every place he just described shoots pistols and rifles, not exclusively shotguns.

Don Mottley said what he wants to know is they put the belt up there and you shoot at the belt; what keeps that from bouncing off the belt and coming back.

Mr. Brady said they experienced that themselves.

Mr. Baize said they see that from when the photographer came because first it was straight up and they had a couple of shoots and had some ricochet issues.

Mr. Brady said they tilted it.

Mr. Baize said they issued some safety glasses and then the members of the post spend a weekend practicing to get the shots to drop down. He said now the shot hits and drops down and so next time they have to clean up the lead it is all within ten feet in from of the berm and one swipe will clean it up and that is another reason for the angling.

Don Mottley asked if the Legion contacted an expert who said this belting is an excellent back...

Mr. Baize said they got this as an example from other places that do the same thing and they have exactly what they put up. He said Celestine, Dubois County and other counties are doing the same thing because of cost because all they shoot is 12 gauge shot shoots. He said they discourage any other type of shooting there by doing that. He said if they put up a berm they are going to have everybody in the neighborhood shooting whatever they want and they don't want that.

Mrs. Rector said the conditions said it has to be ten feet high behind the boards they say they have made it thirteen high. She asked if that is that high now after it is leaning.

Mr. Brady said it is still thirteen feet.

The Chairman asked if there were any other remonstrators for this.

Mr. Brady said he would like the record to show who is present for this.

The Chairman called for a show of hands. Approximately thirteen people raised their hands.

Jeff Devillie said he is from Perry County and he is the historian for the Tennyson Legion. He said the first time he came down here it was for a shooting match and he has never seen a more giving bunch of people in his life. He said they took care of a girl who needed glasses last year and anytime someone needs help they hold a spot shoot for them. He said he is impressed with them and he has been with two other posts and he plans on staying at this one even if he has to drive across Spencer County.

Eric Stahl said he just wanted to comment that they said someone has been calling the Sheriff's Department when they were having the shoots and it hasn't been his family doing that. He said he doesn't know who it is but they have left them alone this year. He said as far as participating in their shoots; he hasn't since all this took place but he would like to once this is all straightened out. He added his youngest son and his grandpa have participated.

Jeff Valiant said the Legion in his town is good and it is good for the community and he does believe they can get to a point they can be happy neighbors, at least he hopes so. He said he doesn't think they want to see the Legion go away and the Legion doesn't want to go away. He then called for questions from the Board.

Don Mottley said if they put the "wings" on there and used the same material they used in the back; would it have the same slope so that any lead hitting it would fall to the ground.

Mr. Baize said they would have to move it quite a bit away from the shooters, probably 30 feet or more but it will still ricochet back. He said it will come back at least ten feet no matter what angle they get; it won't be coming straight back it will come out and down.

Roland Downs said he is an officer of this post. He said his background in the military was a firearms expert. He said as far as the belting on the sides; the slopes won't do anything; that shot is going to hit and go toward the post. He said angling it won't do any good. He said everything that has been done out there so far as ricochet is going to work; it will hit and go straight down. He said he shot rifles in the service and they don't have rifles out there because they aren't set up for it. He said as Veterans, most all of them have been highly trained in firearms and it isn't something they

take lightly at all and in that they should know they are doing absolutely everything they can to make sure it is done as safe as they can.

Ascertaining there were no other questions or comments the Chairman called for a motion on the amendment.

Morrie Doll said for the record to be clear, the variance that is being requested would be that they not have to construct the 148 feet berm but instead accept the 120 feet barrier and the barrier is as they heard it described; a wood and belted barrier versus a berm. He said a berm by definition is a mound of soil. He said they would be waiving the requirement that it would be a berm and accepting the type of construction of a barrier that is there, as built, to be 120' instead of 148' and noting the barrier is 3 feet higher than the prior required berm and waiving the requirement for the 20' barriers/berm on both ends to be constructed. He asked if he accurately stated their request.

Mr. Baize said that is correct.

Attorney Doll said the question before the Board is whether they will accept that in substitution for the existing provision #7.

The Chairman called for a motion. Being no motion he called again for a motion to amend provision #7.

Jeff Valiant made a motion to approve the amendment as stated by Attorney Doll. The motion was seconded by Tina Baxter.

Roll call vote was taken with all four members voting in favor of the motion.

Mrs. Rector said they would do an amendment to the approval and will call them so they can pick it up.

Jeff Valiant said he would just like to say in regards to the lead issue; it was in the Minutes that they would look into lead cleanup. He said as the Attorney said, that is above this Board, perhaps IDEM, but don't just think...he thinks they can all work together. He said don't give up and don't lose hope because of this and hopefully they can work out all the other issues.

Michael Brady said he owns an environmental service company so when it comes to an expert on lead, they are looking at him. He said he is sure they can work something out that will satisfy Mr. Stahl.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector said in their packets is an envelope of documents that Bil Musgrave brought in for them. She added he filed a complaint about a coal mine back in December and it was about 500 pages of information. She said he knew it would take some time for it to be reviewed but he brought these packets in for them. She said they should actually go to the Plan Commission but he sent them to

this Board. She said she thinks it basically says nothing has been done in regards to his complaint. She said that Attorney Doll has the complaint and it is at least 500 pages long and it will take some time to go through everything to determine if they even are in violation of anything. She said she hasn't read the packets and she isn't sure what is in them but she is passing them on.

Being no other business the meeting adjourned at 7:20 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held April 22, 2013.

Sherri Rector, Executive Director